

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION**

In Re:	
Matthew William Davies and Sarah Virginia Davies, Debtors.	Case No. 09-80093

Trustee's Motion to Deny Auction Confirmation

Now comes John A. Northen (the "Trustee"), chapter 7 trustee for Matthew William Davies and Sarah Virginia Davies (the "Debtors") by and through counsel, and moves the Court pursuant to Sections 105 and 363 of the Bankruptcy Code and Rules 2002, 6004, and 9006 of the Federal Rules of Bankruptcy Procedure as follows:

- 1 The Debtors filed a voluntary petition pursuant to Chapter 7 of the Bankruptcy Code on January 22, 2009, and John A. Northen is the duly appointed Trustee in Bankruptcy for the Debtor's estate.
- 2 This Court has jurisdiction over the subject matter hereof pursuant to 28 U.S.C. §§151, 157 and 1334, and this is a core proceeding within 28 U.S.C. §157(b)(2). Venue is proper pursuant to 28 U.S.C. §§1408 and 1409.
- 3 Previously the Court authorized the Trustee to sell real property located at 1408 Wabash Street, Durham, NC (the "Real Property"), jointly held with Tavares Josey and Katherine Josey, (the "Joseys").
- 4 The net proceeds from the sale of the Real Property will represent the only asset of the estate.
- 5 The Debtors each claimed a \$5000 exemption in the Real Property pursuant to NCGS §1C-1601(a)(2).
- 6 The Real Property has a tax value of \$94,541 and upon information and belief is unencumbered by a mortgage. However, the City/County of Durham is owed taxes for 2009 in the amount of \$1290.15 and for 2010 in the amount of \$1225.79.
- 7 Upon information and belief, the Real Property is not in good condition and significant repairs would be required before the home is habitable.

8 The Trustee obtained this Court's permission for John Pait and Associates to serve as auctioneers for the estate by Order dated May 27, 2010. The Trustee held an auction at the Real Property premises on July 30, 2010 (the "Auction").

9 Although the Auction was well advertised, the highest bidder was Calvin Rodgers and Bryson Rodgers with a bid of just \$8000.00 (the "Successful Bid"). The Auction was held subject to confirmation by this Court.

10 Upon confirmation of the Auction, the Trustee would be responsible for paying from the gross proceeds of \$8000, the outstanding taxes for 2009 and the pro-rated taxes for 2010 of \$715.04, and Pait's fees and expenses of \$1253.00, yielding net proceeds of \$4741.81.

11 Pursuant to §363(j) the Joseys are entitled to one-half of the proceeds of the sale after payment of the administrative expenses, which in this case would represent \$2370.91.

12 The remaining proceeds would be paid, if this sale was confirmed to the Debtors pursuant to their "wildcard" exemption, such a result would yield no funds for the Trustee to administer and would create an administratively insolvent estate.

13 For the above reasons, the Trustee takes the position that the Auction is not in the best interests of creditors and should not be confirmed by this Court.

WHEREFORE, the Trustee prays the Court as follows:

1 Enter an Order which holds that Confirmation of the Auction is denied on the grounds that it is not in the best interests of creditors or the estate.

2 For such other and further relief as the Court may deem just and proper.

This the 25th day of October, 2010.

/s/ Stephanie Osborne-Rodgers

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Certificate of Service

This certifies that the undersigned served foregoing by 1) automatic electronic noticing or by 2) first class mail, postage prepaid to the parties at the following addresses:

Michael D. West Bankruptcy Administrator P.O. Box 1828 Greensboro, NC 27402	Matthew William Davies Sarah Virginia Davies 1412 Oak Forest Drive Hillsborough, NC 27278
Tavares D. Josey Katherine E. Josey 116 Monterey Lane Durham, NC 27713-2518	John T. Orcutt 6616-203 Six Forks Rd Raleigh, NC 27615
John A. Pait John Pait & Associates 204 Dartmouth Street Greensboro, NC 27407	Calvin Rodgers Bryson Rodgers 2915 NC Hwy 55 Durham, NC 27713

This the 25th day of October, 2010.

NORTHEN BLUE, L.L.P.

S/Stephanie Osborne-Rodgers
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